

Additional Views of Mr. Delahunt
Regarding H.Res.132,
A resolution to reaffirm the reference to one Nation under God
in the Pledge of Allegiance

Judges should not be immune from criticism. Indeed, healthy debate on the merits of judicial decisions is an essential element of our system of justice. But there is a difference between legitimate criticism and pressure tactics that pose a threat to judicial independence.

Like all Americans, Members of Congress are free to criticize judicial decisions with which we disagree. In fact, I joined most of my colleagues in voting for a resolution during the last Congress (H.Res.459) that expressed disapproval of this very decision and urged that it be overruled.

But I voted "present" on this current resolution because it goes further in a way that I believe would set an unwise and dangerous precedent. It is one thing to urge the Judicial Branch to use the normal process of appellate review to correct an erroneous decision. It is quite another thing to imply that judges who issue unpopular decisions in particular cases are unfit for office.

Unfortunately, that is what the present resolution does. It not only expresses disapproval of the court's reasoning in *Newdow*, but states that "the President should nominate and the Senate should confirm Federal circuit court judges who interpret the Constitution consistent with the Constitution's text."

By linking future nominations to a particular ruling with which the proponents disagree, the resolution sends a not-so-subtle message to sitting judges and other potential nominees that they had better tailor their constitutional views to those of the congressional majority if they wish to be confirmed.

The framers recognized that an independent Judicial Branch is an essential guarantor of freedom in a democracy. For this reason, Article III of the Constitution provides that judges shall continue in office during good behavior, and that their compensation shall not be diminished during their continuance in office. For the same reason, those who profess fidelity to the Constitution must take great care not to chip away at the independence of the judiciary on which our liberty depends.

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